

Statement of

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MR. CHAIRMAN: As the other testimony at this hearing makes clear, reapportionment and redistricting based on noncitizen settlement patterns are profoundly affecting Congress and America's political process in unanticipated ways. Since 1960, the Northeastern and Midwestern states have had to forfeit representation to the faster-growing South and West. For example, in 1960, New York had forty-one U.S. House seats, today it has 29. Pennsylvania had twenty-seven, but today it has 19; Ohio has dropped from 24 to 18.

Florida, California and Texas have gained seats with every new census. The redistribution of seats occurring in 1970 and 1980 was almost completely the result of internal migration, citizens moving from state to state. Beginning in 1990, however, and continuing today with increasing intensity, immigration has been driving reapportionment.

Counting noncitizens for purposes of apportionment raises some thorny issues about equality of representation. In a series of well-known 1960s cases, the Supreme Court dictated that congressional and state legislative districts had to be approximately equal in population. Since the Court's decision in *Wesberry v. Sanders* (1964), states have had to draw their congressional district boundaries based strictly on population distribution. In this case and several related ones, the Justices struck down state plans that created grossly unequal districts that gave rural voters disproportionate influence compared to urban voters. In *Wesberry*, Justice Hugo Black, writing for the majority, argued that the disparities in Georgia's congressional districts mean that votes in some parts of the state were weighted at two or three times the value of votes in other parts of the state. The Court said that a vote worth more in one district than in another runs counter to fundamental American ideas of democratic representative government. In a similar case, *Reynolds v. Sims* (1964), the court stated, "Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable." Because malapportioned districts were ruled to be in violation of the Equal Protection Clause of the Fourteenth Amendment, these states were forced to reapportion.

Immigration-induced reapportionment is now introducing a different kind of vote dilution than the one the Court ruled against in the reapportionment

cases, but it is dilution nonetheless. Because immigrants tend to concentrate geographically in just a few states – 75 percent have settled in only six states since 1970 -- some congressional districts wind up encompassing large noncitizen populations that cannot vote. In California, for example, several such districts exist today. These districts contain less than half the citizens – and less than half the number of eligible voters – that one finds in typical districts in interior states. This means that citizens in the high immigration districts share their representatives with relatively few other eligible voters compared with those in interior states. The voters in the immigrant-heavy locations enjoy enhanced voting power, while those in low immigration districts have their votes diluted, raising fundamental questions of equality and voting rights.

Districts may be approximately equal in population size, but if they are substantially dissimilar in electoral size, serious inequities result. If two districts are home to 1,000 people, one voter may share a representative with 980 citizens, while another shares a representative with 400 or fewer citizens. This violates the principles of equality of representation embodied in Constitutional law, diluting the representation of those in the district with more citizen constituents. If everyone were eligible to vote; all persons, without respect to age or citizenship, then perhaps this kind of inequity would not be troublesome. But since we have long held that only citizens over age 18 have voting rights, it is

problematic that some of these citizens have their votes diluted as a coincidence of where they happen to live.

Clearly today's congressional districts are not equal in critical respects that matter greatly to the operation of our government. Consider what it takes to get elected to a seat where there are only 50,000 voters, compared to one where there are eight or nine times that many who need to be reached during the course of an election campaign.

Consider also the unequal workloads of the members of Congress who represent these highly unequal districts. Survey data have shown that citizens are far more demanding of members of Congress than noncitizens, even after we consider the casework associated with naturalization and citizenship. As a consequence of representing a large share of noncitizens, one member may have to chase only a small fraction of the Social Security checks than another does. One member must respond to only half the amount of constituent mail. To be sure, noncitizens and nonvoters also contact congressional offices, but they do so far less frequently than citizens. Hence even if members of Congress do respond to noncitizen requests for assistance, the workloads are still likely to be highly unequal. One member of the U.S. House should not have to spread her staff more thinly to cover her constituent's demands than another simply because of the presence of noncitizens in the apportionment base.

Real examples are out there, so we need not confine ourselves to hypotheticals. Consider several of the immigrant-heavy Southern California congressional districts. Specifically, we might consider California's immigrant heavy 33rd district, or perhaps the 37th district. In 2004, a year of record-high turnout around the nation, only 110,460 votes were cast in the 33rd district contest and the incumbent was reelected with 74.5 percent of the vote. In 2002, the same incumbent was reelected by a similar margin in a contest that saw a mere 65,800 votes cast. In 2002, the incumbent in the 37th district was reelected in a contest that saw only 88,000 votes cast and in 2004, this member ran unopposed.

Now consider two districts in Michigan and Ohio -- many would be suitable comparisons, but we will pick out only two for the sake of illustration; the 12th district of Sander Levin, in Michigan, and the Ohio 17th district currently represented by Tim Ryan. Either one, or both, of these districts could be reconfigured or lost entirely in the 2010 reapportionment. In their 2004 reelections, 304,000 votes were cast in the Michigan district, and 275,000 in the Ohio 17th. Now both of these Members of Congress were reelected by solid margins similar to those of their colleagues in California, but the task of representation, and of running for reelection, is very different from what the California members face. Because the California districts contain thousands of noncitizens, and the Michigan and Ohio districts rather few, the Midwestern

districts may disappear in 2010 because the constituents of these two members just happen to have been born in this country! A member of Congress who received 200,000 votes would be thrown out, and the one who received 50,000 would be retained, all because of immigrants, both illegal and legal.

The perverse moral of the current system is clear: the greater the proportion of citizens in a state, the fewer congressional seats that state receives. We can actually quantify the current penalty of citizenship on congressional apportionment, and the precise relationship is shown below:

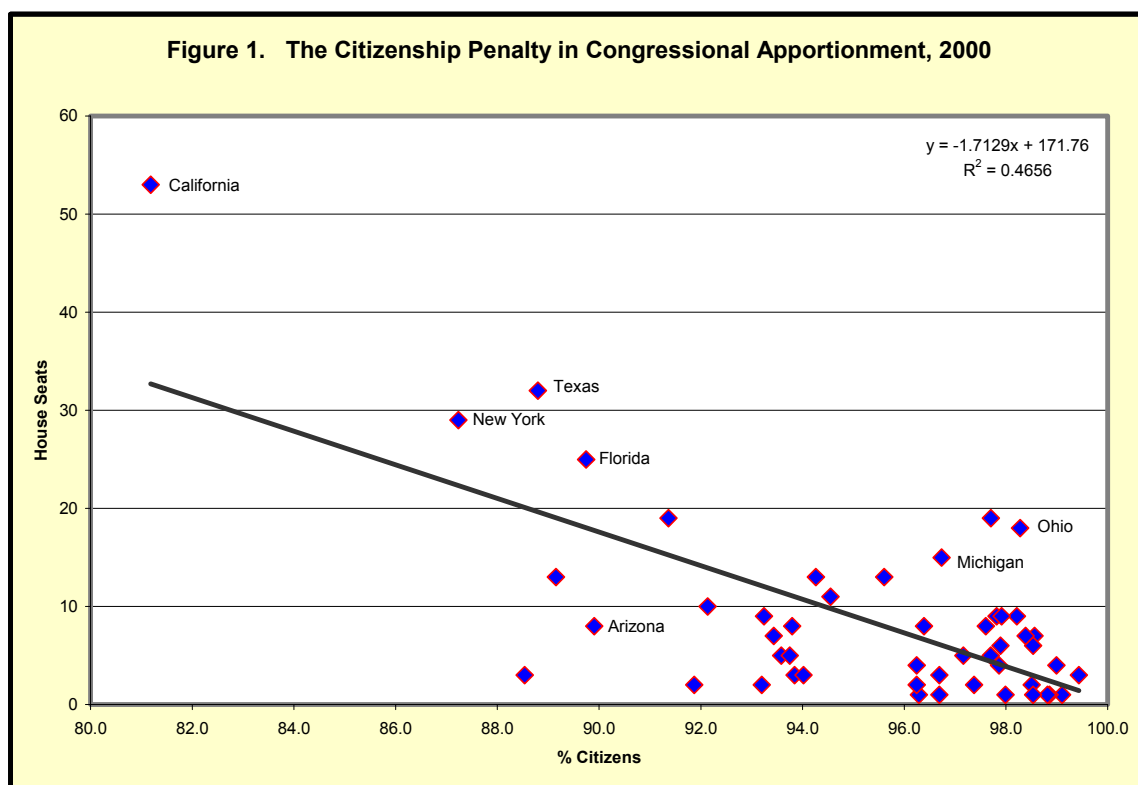


Figure 1 indicates that for *each one percent increase in the percentage of citizens in a state in 2000 there is a 1.7 drop in the number of congressional seats the state received from this decennial reapportionment.*¹ Naturally, this relationship is a function of the fact that noncitizens flow to more populous states, but Figure 1 is still striking and provides a concrete estimate of the impact of the geographic concentration of immigrants on our political system. Could it someday be the case that a congressional district is created that has *literally no citizens* inside it? Theoretically this is clearly possible, though state legislatures would surely be sensible enough to stop short of this. Nearly hollow districts certainly do exist, and the proliferation of such districts taxes the citizenship status of all Americans.

Mitigating the penalty imposed on citizenship is a challenge, but several possibilities come to mind. The Supreme Court has favored counting both citizens and noncitizens in apportionment, so a Constitutional amendment of the kind proposed by Representative Miller will probably be required to effect this change.

The case for constitutional change can certainly be made on equal-protection grounds, as it was by Judge Alex Kozinski of the Ninth Circuit Court of Appeals in 1990. In a California case, *Garza v. County of Los Angeles*, Kozinski

¹ The penalty was even higher after the 1990 round of apportionment, when for every one percent increase in the size of their citizen population, states lost 2.2 U.S. House seats.

wrote a dissenting opinion pointing out that apportionment by population can result in unequally weighted votes and that assuring equality in voting power might well call for districts of unequal population size. He suggested that counting noncitizens, who cannot vote, in apportioning voting districts clearly dilutes citizens' votes. Kozinski concluded, "If, as I suggest, one person, one vote, protects a right uniquely held by citizens, it would be a dilution of that right to allow noncitizens to share therein." Kozinski's opinion in this case is consistent with the notion that only citizens may vote, as a benefit of citizenship, and therefore only citizens' residence should count in apportioning political representation. At a minimum, *illegal* immigrants certainly should not count in apportioning representation.

Another solution is to promote citizenship and naturalization more aggressively. Some policymakers want to streamline and shorten the naturalization process, but this is likely to make it less rigorous and meaningful. The process has already been watered down significantly in the past two decades, with test questions more along the lines of Trivial Pursuit than American Government 101. The naturalization process today hardly ascertains one's genuine understanding of and attachment to America's history, ideals and founding principles. New citizens are supposed to have a command of English, but here, too, the naturalization system imposes only minimal requirements.

Many who naturalize cannot carry on a simple conversation in English, and this fact is painfully evident to BCIS (Bureau of Citizenship and Immigration Services) testers. Citizenship should once again be a privilege, something an individual must strive to achieve. Further “streamlining” the naturalization process would probably cheapen citizenship to the point of no return.

Cutting overall immigration levels, of course, would be another way to reduce the impact of noncitizens on citizens’ votes. Modestly reducing immigration levels would increase the likelihood that those immigrants who were admitted would assimilate, because it would be more difficult for them to find their way into a large immigrant enclave, where isolation from the dominant culture slows the acquisition of skills and delays upward mobility.

Let me also make a plea to the congressional leadership for additional information about congressional contact with constituents, and the amount of casework performed by each staff. Currently the Clerk of the House does track the amount of franked mail leaving each office, and has done so since 1996. I would suggest that the Clerk of the House produce annual reports on the amount of incoming mail to each office, as well as gather reports on the amount of casework performed in each congressional office. This information would help us to evaluate more completely the variability in the workload across congressional districts. I am not proposing just another bureaucratic procedure,

but requesting a critical piece of information needed to study member activity in greater detail.

Meanwhile, until we decide how to address the vote-dilution problem caused by both legal and illegal immigration, American voters will suffer from unequal representation. Congress and the Executive Branch should work together to restore fairness and integrity to the electoral process.